

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Part 15 of the)	ET Docket No. 99-231
Commission's Rules Regarding)	
Spread Spectrum Devices)	

To The Commission

Petition for Reconsideration

Warren C. Havens ("Havens") and Telesaurus Holdings GB, LLC ("Telesaurus") (in which Havens holds majority controlling interest) (together, "LMS Wireless," their DBA ["LMSW"]), hold the majority of the LMS Multilateration ("LMS-M") 'A'-block licenses in the nation.¹ This block is 6 MHz of the 902-928 MHz band in which unlicensed devices may operate, including under amended Part 15 rules adopted in the *Second Report and Order*, released May 30, 2002, in the above-captioned docket ("*Second R&O*").

LMSW hereby petitions for reconsideration of the Part 15 rule changes in the Second R&O with regard to the 902-928 MHz band. LMSW asks that the Commission defer making any changes to Part 15 rules that apply to the 902-928 MHz band until (i) the conclusion of the current proceeding initiated by a petition for rulemaking by Progeny LMS LLC for rule changes applicable to Location and Monitoring Service ("LMS") licenses and in relation thereto, potential rule changes regarding unlicensed (Part 15) device

¹ These LMS-M license holdings give Havens and Telesaurus direct interest in the matters of this Petition for Reconsideration.

operations in LMS licensed spectrum (the “Progeny Proceeding”),² and (ii) until the Commission decides upon a petition for rulemaking which LMSW, as it has informed the Commission, plans to file within the next two months,³ based upon comments to the white paper it has drafted and will be filing in the next two week to the FCC Spectrum Task Force,⁴ and other interested parties. The LMSW petition and the related LMSW white

² See *Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking Regarding Location and Monitoring Service Rules*, RM No. 10403, DA 02-817 (April 10, 2002).

³ See *Comments and Reply Comments* of LMSW (Havens and Telesaurus) in RM-10403 in which LMSW outlines the petition for rulemaking it intends to file. (Pursuant to recent input from various parties, LMSW has modified its planned petition. The modifications will be presented in the white paper (called the “ATLIS Proposal”) noted above and involve, in brief: dedication to Public Safety (“PS”) and Critical Infrastructure (“CI”) of 13 MHz in the 902-928 MHz band: the spectrum currently allocated to “Non-multilateration” system operations. LMSW is proposing that this 13 MHz be allocated exclusively for wide-area operations of PS (Federal, State, and local) and CI entities, as long as they protect the very short-range Non-multilateration station operations. LMS Multilateration licensees would also provide certain priority access to their spectrum for these PS and CI system operations, and this LMS-M spectrum would also be used for the PS and CI systems where they cannot use the Non-multilateration spectrum (i.e., where there are Non-multilateration operations). Generally, PS, CI, and LMS-M licensees would jointly build and operate wide-area systems (each having virtual private networks), achieving great economies of scale, interoperability, equipment vendor leverage, etc. LMS-M licensees, with their share of such joint networks, could also serve, via leases and joint ventures, PS and CI, as well as much needed Intelligent Transportation System functions, and wide-scale environmental monitoring. Vendors of Part 15 products in this band could continue to serve this market, but under licensed operations, rather than via the uncontrolled unlicensed mode which can lead to unacceptable performance degradation when used for mission-critical and commercial wireless. The market created by this ATLIS proposal would be a better, larger, more long-term market for such vendors.

⁴ See preceding footnote. Also, LMSW has already presented core concepts of this white paper in personal and phone presentations to the FCC (WTB, OET, and the Spectrum Task Force), the United Telecom Council and some of its members, NTIA, APCO, the DARPA XG Project, Motorola, EADS, ITS America, some Part-15 device vendors (including Wi-Lan and Microwave Data Systems) and other potentially interested parties. LMSW has invited many other such vendors to meet and discuss these

paper each concern a partial reallocation of the 902-928 MHz band for Public Safety and Critical Infrastructure entity use, and in relation thereto, appropriate rule changes with respect to Part 15 device operations and LMS licensed operations in this band.

The above mentioned proceedings are critical for the highest and best use of LMS licensed spectrum, as well as for the great potential of use of the 902-928 MHz spectrum for Public Safety and Critical Infrastructure entities, including for Homeland Security functions, as described by LMSW in various filing with the FCC (see footnotes). These important developments would be jeopardized by premature changes in the rules for Part 15 devices in this band that would take place if this petition for reconsideration is not granted. This petition should thus be granted.

In addition, in the Progeny Proceeding, Part-15 vendors and entities using Part 15 devices for wireless systems have made arguments that there should be no rule changes in 902-928 MHz that would benefit LMS *licensed* operations, since, from their perspective, that could lead to a less favorable spectrum environment for *unlicensed* Part 15 operations in this band.⁵ Such entities should accept their own medicine: *unlicensed* Part 15 operations should not be granted increased flexibility in the 902-928 MHz band via the Second R&O if that is at the expense of *licensed* LMS operations. Under Part 15 rules, unlicensed devices may not cause harmful interference to licensed operations. Increased flexibility may lead to increased traffic, and this may lead to interference with

ideas, including most of those listed in footnote 5 below, with a goal to objectively explore these matters, including to minimize contention before the FCC. Thus far, they have declined or not responded.

⁵ *Comments and Reply Comments* in RM-10403 of Axonn, LLC, WaveRider Communications, Inc., Itron, Inc., Ricochet Networks, Inc., SchlumbergerSema, Inc., License-Exempt Alliance, GE-Interlogix, Inc., LXE, Inc.

LMS operations. (On the other hand, increased flexibility to licensed operations is not a cause for legitimate complaint by unlicensed device vendors and operators, since they have no vested rights to use the spectrum, and since they have orders of magnitude more spectrum, some exclusively for unlicensed operations, and regularly petition for still more.)⁶⁷

For the foregoing reasons, this Petition for Reconsideration should be granted.

Respectfully submitted,

Warren Havens

Warren C. Havens and
Telesaurus Holdings GB, LLC
D.B.A., LMS Wireless

2509 Stuart Street
Berkeley, CA 94705

Phone: 510-841-2220
Fax: 510-841-2226

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⁶ Including the 2.4 GHz band, the UNII 5 GHz bands, Ultra Wide Band spectrum, and the unlicensed PSC band.

⁷ See also the Ex Parte filing by UTC in the Progeny Proceeding, RM-10403. Most of the unlicensed devices in 902-928 MHz, apart from very low power indoor consumer devices, are used by UTC members (various utilities, etc.). In this Ex Parte filing, UTC asks that the FCC consider the upcoming LMSW (Havens and Telesaurus) alternative proposal to the Progeny petition. Also, UTC notes in its Comments of March 6, 2002 in DA 02-361 (NTIA study on spectrum for Critical Infrastructure), Appendix, p. 15: unlicensed spectrum is generally not appropriate for CI communications where 100% reliability or system control is needed.